TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES
JANUARY 18, 2007

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning about various oversight activities being conducted by the Office of Inspector General (OIG) for the Department of the Interior (DOI) concerning multiple issues involving the Minerals Management Service (MMS). Specifically, I am here today to discuss the results of our audit of MMS' Compliance Review Process, which was released publicly in December 2006, and the results of our investigation into the circumstances surrounding MMS' failure to include price thresholds in deepwater leases entered into during 1998 and 1999, which is being released publicly this morning.

Our audit of the compliance review process – one of several tools utilized by MMS' Compliance Asset Management (CAM) Program – was initiated in response to a request from this Committee and other members of Congress to assess the effectiveness of these compliance reviews. This audit was timely – not only because it followed the first of several *New York Times* articles on MMS and its royalty program, but also because the compliance review process, which was launched in 2000, was ripe for an audit in 2006.

This is not our first audit of MMS' Compliance Asset Management Program. In 2003, we conducted an audit of MMS' audit function in which we concluded that MMS' internal quality control system could not ensure that its audits were being conducted in accordance with policies, procedures and Government Auditing Standards. We also

found an instance of MMS auditors recreating and back-dating working papers. Since that time, however, the MMS audit offices have undergone and "passed" two external peer reviews, an indication that MMS has corrected the problems we identified in 2003.

From our audit of the compliance review process, we found that compliance reviews play a useful role in MMS' greater Compliance and Asset Management Program. Compliance reviews can provide a broader coverage of royalties, using fewer resources than traditional audits. They do not, however, provide the same level of detail or assurance that a traditional audit provides. As a result, we concluded that compliance reviews should only be used in conjunction with audits, in the context of a well-designed, risk-based compliance strategy. We also discovered two principal weaknesses that are preventing MMS from maximizing the benefits of compliance reviews. First, we discovered that very few full audits were ever triggered by anomalies discovered in the compliance review process. We also learned that because the program's performance measures were tied to dollar figures, only the big companies and leases were being reviewed, leaving hundreds of smaller companies that MMS never looked at.

In addition, we made several recommendations to improve CAM's management data, and to strengthen the compliance review process overall. With few exceptions, MMS agreed with our recommendations; most notably, MMS agreed to revise its performance measures and to develop and pilot a risk-based compliance strategy for its compliance review process; and, as promised, MMS has now provided us with an Action Plan for implementing these changes.

Contemporaneous with our audit of the compliance review process, we conducted an investigation into the failure of MMS to include price thresholds in the terms of

deepwater leases issued in 1998 and 1999. We conducted our investigation with two primary questions in mind: How and why were price thresholds omitted from the leases; and what happened once the omission was discovered. During the course of our investigation, we conducted 44 interviews and reviewed approximately 19,000 e-mails and 20,000 pages of documents. We have determined that MMS intended to include price thresholds in leases issued pursuant to the Deepwater Royalty Relief Act, as evidenced in the first leases issued in 1996 and 1997, as well as in 2000; but while MMS was developing new regulations relating to the Deepwater Royalty Relief Act, there was significant confusion among MMS operational components and the Office of Solicitor (SOL) as to whether or not the regulations would address price thresholds. In the end, the regulations did not, and the price thresholds were left out of the leases.

The person responsible for directing the preparation of the leases said he was told by persons in MMS' Economics and Leasing Divisions to take the price threshold language out of the leases. The people in the Economics and Leasing Divisions denied doing so. The one person involved in both the regulation development and lease review process, a SOL attorney, conceded that he should have spotted the omission, but did not. The official who signed the leases on behalf of MMS told us he relied on the SOL attorney and his own staff.

When the omission was discovered by MMS staff in 2000, it was not conveyed up the chain of command to the MMS Directorate. Unfortunately, the official who made this particular decision is deceased. We interviewed the former MMS Directors who were in place at the time of the omission and the time of its discovery, as well as the

present Director. Each told us that they only became aware of the omission when the first *New York Times* article came out last fall.

Near the end of our investigation, however, we found a series of e-mails that suggested that the present Director had been advised of the price threshold omission as early as 2004. We went back to her with this information and conducted a follow-up interview. When she read the e-mails, she appeared genuinely surprised, but conceded that the e-mails indicated that she had probably been told of the omission in 2004. She still had no independent recollection, but speculated that she was probably told of the mistake in conjunction with being informed that the Solicitor's Office had opined that nothing could be legally done to remedy the issue.

Mr. Chairman, this, at a minimum was a shockingly cavalier management approach to an issue with such profound financial ramifications, a jaw-dropping example of bureaucratic bungling, and a reliance on a surname-process which dilutes responsibility and accountability. Although we found massive finger-pointing and blame enough to go around, we do not have a "smoking gun" or any evidence that this omission was deliberate; we do, however, have a very costly mistake which might never have been aired publicly absent the *New York Times*, the interest of this Committee, the House Subcommittee on Energy and Resources and that of several other interested members of Congress.

I would like to say that this concludes the summary of the oversight activities my office is conducting relative to MMS; unfortunately, it does not. We have several other investigations ongoing, some of which are criminal in nature. As a result, I am not presently at liberty to discuss them. With regard to these matters, however, we have

coordinated closely with the Department in order to provide Assistant Secretary Allred with enough general information so he could take some interim preventive measures. In fact, I would like to publicly thank both Secretary Kempthorne and Assistant Secretary Allred for being receptive to our findings and recommendations. I am encouraged that they both share my belief that beyond actual improprieties, appearances do matter.

This concludes my formal testimony. Thank you for the opportunity to appear here before the Committee today. I will be happy to answer any questions you may have.